

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12224 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

ASHISH CHANDAKANT SONI

Versus

POLICE COMMISSIONER VADODARA

Appearance:

1. Special Civil Application No. 12224 of 2002
MR PRAVIN GONDALIYA for Petitioner No. 1
MS NANDINI JOSHI, AGP for Respondent No. 1-3
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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 08/05/2003

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Gondaliya for the detenu and Ms. Nandini Joshi, AGP for the State.

2. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of detention dated 17.9.2002 passed against him by the Commissioner of Police, Vadodara City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) the petitioner-detenu. The detenu was branded as "bootlegger" within the meaning of section 2(b) of the Act.

3. The grounds for detention supplied to the detenu petitioner indicate that the detenu was found involved in two different offences punishable under Sections 66B, 65AE, 116B of the Bombay Prohibition Act wherein India Made Foreign Liquor was seized.

4. The detenu has challenged the legality and validity of the order of detention on number of grounds mentioned in the memo of the petition. However, the ld. counsel Mr. Gondaliya for the detenu, has mainly focussed his arguments on two grounds. Firstly, it has been submitted that alleged activities of the detenu mentioned in the grounds of detention cannot be said to be activities affecting the public order. So, the Commissioner of Police, Vadodara city has no scope to exercise jurisdiction or powers vested in him under Section 3(2) of the PASA Act.

5. The subjective satisfaction recorded by the authority says that the activities of the detenu affect the "public order" is neither legal nor logical. At the most, it can be said that the activities fall under the category which can be said to be adverse to the law & order situation in the society. It is submitted that in the case of similar set of facts, this Court (Coram: A.L. Dave, J) while dealing with the Spl.C.A. No. 143 of 2002 in the case of Babuji Jakshi Thakore v/s State of Gujarat, decided on 14.2.2002, has held that the activities of the person concerned concerning with the offences punishable under the provisions of the Bombay Prohibition Act, cannot be said to be the activities affecting the "public order" in absence of any other relevant and cogent set of facts and such set of facts credible material. In the case of Babuji Jakshi Thakore (supra), this Court has observed that the only material wherein also there is nothing to indicate any disturbance to the "public order". So, mere registration of criminal offences punishable under the Bombay Prohibition Act should not give rise to any cause for detaining authority

to pass such order affecting adversely to the personal liberty.

6. It has been next submitted by ld. counsel Mr. Gondaliya that the co-detenu of the present detenu has been set at liberty by this Court while dealing with Spl.C.A.No.9778/2002 and vide oral judgment dated 8.5.2003, impugned order of detention passed against the co-detenu came to be quashed and set aside. So, on the ground of parity, ld. counsel Mr. Gondaliya has submitted that the present detenu should also be set at liberty. Ld. AGP Ms. Joshi has also fairly accepted that co-detenu of the present detenu has been set at liberty by this Court and so ground of parity is available to the present detenu.

7. In view of the facts and circumstances above and settled legal position, I am inclined to allow this petition by quashing and setting aside the impugned order of detention.

8. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 17.9.2002 passed by the Commissioner of Police, Vadodara City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

8-05-2003 [C. K.BUCH, J]

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